RETURN DATE: JUNE 26, 2018 : SUPERIOR COURT

VICKIE ORSINI NARDELLO : J.D. OF WATERBURY

AT WATERBURY

VS.

DENISE MERRILL

JUNE 11, 2018

VERIFIED COMPLAINT

COUNT ONE:

- Plaintiff Vickie Orsini Nardello is a resident of the Town of Prospect and is seeking the nomination of the Democratic Party to run for the office of State Senator for the 16th Senate District, after serving as a State Representative for the past 18 years.
- 2. Defendant Denise Merrill is the Secretary of the State, and by virtue of her office she is the Commissioner of Elections for the state. She has the responsibilities for administering elections consistent with the Constitution and laws of the State of Connecticut and, where applicable, the United States. Conn. Gen. Stat. §§ 9-3, 9-4.
- 3. Secretary Merrill is named herein in her official capacity.
- 4. On May 21, 2018, a Democratic Party Convention was held by delegates for the 16th Senate District election, pursuant to the rules of the Connecticut Democratic State Central Committee and the Connecticut Democratic Party.
- 5. The purpose of the convention was to choose an endorsed candidate for the Senate seat,

- pursuant to Conn. Gen. Stat. §§ 9-381 et seq., and to determine if other candidates qualified to run in a primary on August 14, 2018, by virtue of their obtaining 15 percent of the votes of delegates present and voting.
- 6. Delegates to the convention are chosen by caucuses of registered Democrats from the towns that are included within the 16thSenate District, namely Cheshire, Prospect, Southington, Waterbury, and Wolcott.
- 7. There are three ways for a candidate to qualify to be placed on the ballot for a primary election to the General Assembly.
- 8. First, the candidate who receives a majority of the delegates present voting at any roll call vote at a convention becomes the endorsed candidate and qualifies for the primary. Conn. Gen. Stat. 9-388.
- 9. Second, if another candidate receives the votes of at least 15 percent of the delegates present and voting at any roll call vote, that candidate automatically qualifies to run in a primary against the endorsed candidate. Conn. Gen. Stat. § 9-400(b)(1).
- 10. Third, a candidate who did not receive at least 15 percent of the convention delegate votes can qualify by obtaining the petition signatures of at least five percent of registered party members in the district and file them by June 12, 2018. Conn. Gen. Stat. § 9-400(b)(2).
- 11. The convention was held on May 21, 2018, and the voting proceeded according to state law and the party rules.

- 12. Forty-five delegates were present and voted at the convention in favor of endorsing a candidate.
- 13. Twenty-six delegates voted in favor of endorsing Dagmara Scalise as the candidate.
- 14. Nineteen delegates, or 42 percent, voted in favor of plaintiff Nardello.
- 15. By virtue of her receiving over 15 percent of the votes of convention delegates, Nardello qualified under Conn. Gen. Stat. § 9-400(b)(1) to be placed on the ballot for a primary on August 14, 2018, without submitting petition signatures.
- 16. Under Conn. Gen. Stat. § 9-400(b)(1), the convention chair or secretary, along with the candidate, signed a form to be filed with the Secretary of the State certifying that plaintiff did in fact receive the votes of 15 percent of the delegates.
- 17. The form is identified as ED-634gl[D], and is called a Certificate of Eligibility and Candidate's Consent.
- 18. Connecticut Democratic Party rules also state: "Any candidate that receives 15% on any announced, final or accepted roll call vote shall be eligible to primary." Conn. Dem. State Party Rules § 13.B.
- 19. Connecticut Democratic Party rules require the officers of a convention to perform the following functions:

The secretary of each convention shall prepare an accurate list, printed by hand or typewritten, of the candidates endorsed by the convention, and also of any candidates receiving at least fifteen percent (15%) of the votes of the convention delegates present and voting on any roll call vote taken on the endorsement or proposed endorsement of a

candidate, whether or not the party endorsed candidate received a unanimous vote on the last ballot, with the names, street addresses and towns of the person so endorsed or receiving fifteen percent (15%) of the votes and the title of the office for which each person is a candidate. This list shall be certified by the permanent chairperson and secretary of the convention and shall be delivered to the Secretary of the State by the chairperson of the convention not later than forty-eight (48) hours after the close of the convention. . . . Copies of such lists shall be delivered to the Secretary of the State Central Committee.

Conn. Dem. State Party Rules § 15 (emphasis added). If the convention officers complied with their obligations under these rules, then the Secretary of the State was aware within two days after the convention that Nardello had qualified for a primary.

- 20. Under Conn. Gen. Stat. § 9-400(b)(1), the executed Certificate of Eligibility Form ED-634gl[D] was to be filed with the Secretary of the State within fourteen days of the convention, or June 4, 2018.
- 21. On information and belief the chair of the convention signed the Certificate of Eligibility described above, gave it to Nardello, and Nardello delivered it to the Secretary of the State on May 25, 2018, well in advance of the deadline of June 4, 2018.
- 22. The Secretary of the State, through an employee of the office, informed Nardello on June 1, 2018, that the form was incomplete in that it did not identify what specific district the Senate Convention concerned, although it did contain identifying information showing the residence of the candidate and the location of the convention within the 16th Senate District.
- 23. Specifically, on June 1, 2018, the Secretary of the State's chief of staff sent an email to

- Nardello stating, with emphasis added: "Vickie: attached is your form. Looks like we didn't have the district number filled in but *that's been resolved*. *You're all set*".
- 24. On June 2, 2018, Nardello reviewed a copy of the form sent to her by the office of the Secretary of the State on June 1, 2018, after being advised that her paperwork was "all set." Nardello discovered that the Secretary of the State's office had indeed filled in the blank for the Senate District but filled in the wrong district, namely the office of the Secretary of the State filled in "15" rather than "16."
- 25. Nardello immediately sent a text message to the chief of staff of the Secretary of the State on June 2, 2018, at 11:57 a.m. which stated: "I am running in the 16th senatorial as the primary challenger not the 15th. Let me know if I have to do anything or can this be taken care of by your office. Sorry for all this confusion."
- 26. The chief of staff of the Secretary of State responded by text message on June 2, 2018, at 1:20 p.m. stating in full: "Ok I'll fix it. No problem."
- 27. Nardello contacted the chief of staff of the Secretary of the State by telephone on June 2, 2018, offering to travel to Hartford on Monday, June 2, 2018, to file a new form with the proper senate district. Nardello was advised that there was no need to do so.
- 28. Nardello responded by text on the name date at 4:42 p.m. "thank you."
- 29. Nardello did not travel to Hartford to re-file the form with the proper Senate district in reliance on the express statements of the office of the Secretary of the State described above,

- and Nardello did not receive any information from that office on June 3 or June 4 that despite the express statements of June 2 the office in fact would not be able to "fix it."
- 30. On June 5, 2018, an attorney for the Secretary of the State informed Nardello by an emailed letter that the Secretary of the State rejected the Certificate of Eligibility solely on the ground that it was not "completed and filed" by June 4, 2018.
- 31. That letter incorrectly stated that "[o]n June 5, 2018, your or your representative attempted to change the certificate from 'Senatorial District 15' to 'Senatorial District 16', the correct district..." In fact, neither the plaintiff nor anyone under her direction attempted to change the certificate; there was no need for her to do so given that on June 2, 2018, the chief of staff of the Secretary of the State advised her "I'll fix it. No problem", and Nardello had no reason to suspect otherwise.
- 32. In rejecting the certificate, the Secretary refused to allow the filing despite, among other factors:
 - a. The absence of unfair prejudice to anyone involved;
 - b. The chief of staff of the Secretary of the State advised Nardello that she would fix the absence of a numbered district on the form, but then fixed it by filling in the wrong district, then apparently forgot to correct that mistake before the filing deadline;
 - c. The chief of staff of the Secretary of the State told Nardello there was no need to travel to Hartford on June 4, 2018, to file a new form, upon which Nardello relied to

- her detriment and to the detriment of those delegates to the convention who supported her and those voters who would support her in a primary;
- d. Significantly more than 15 percent of the delegates voted to endorse Nardello so her qualification for a primary is unquestioned;
- e. She is a long-serving state representative and has demonstrated substantial community support by virtue of her election multiple times;
- f. The convention chair and secretary failed to follow party rules regarding filings with the Secretary of the State and the Secretary of the DSCC by not completing the certificate completely;
- g. The Certificate of Eligibility form states that "[t]his form must be filed with the

 Office of the Secretary of the State to be a valid candidate for the primary," but does
 not advise that a missing district number when all other identifying information is
 present will be invalid, nor does it advise that a missing district number cannot be
 added before the deadline.
- h. Voters in the Democratic primary, including Nardello, have a substantial constitutional interest and public interest in a fair and open primary among all candidates who have sufficient support, by convention or otherwise, to appear on the ballot, and disenfranchising those voters and Nardello is not in the public interest and would violate their constitutional right to free association and political expression.

- 33. The Secretary's rejection of the Certificate, solely for the reason that it did not initially include a district number and thus "deemed invalid" was in violation of the laws of the State of Connecticut including Conn. Gen. Stat. §§ 9-3, 9-4, 9-400(b)(1), because the Certificate was in fact received and filed on May 25, 2018, and it was the action of the chief of staff of the Secretary of the State that caused the form not to include the proper district by June 4, 2018.
- 34. Nardello relied to her detriment on the representations of an employee of the Secretary of the State in not filing a corrected form herself by June 4, 2018.
- 35. Nardello is without an adequate remedy at law to remedy the above-described violations.

 Petitioning onto the ballot upon notification on June 5, 2018, that the form would not be accepted was not a reasonable alternative due to lack of time, including lost time due to the errors of the Secretary of the State, and the unavailability of a grant under the Citizen Election Program to fund such an effort.
- 36. The ruling of the Secretary of the State that the Certificate was untimely was a ruling of an election official in connection with a primary for purposes of Conn. Gen. Stat. 9-329a, and a copy of this complaint will be forwarded to the State Elections Enforcement Commission.

WHEREFORE, plaintiff requests:

1. An order compelling the Secretary of the State to place the name of Vickie Orsini

Nardello on the primary ballot for the 16th State Senate district, by means of a temporary and permanent injunction and by means of a writ of mandamus.

2. Such other relief to which the plaintiff is entitled at law or in equity.

THE PLAINTIFF VICKIE ORSINI NARDELLO

By

William M. Bloss

Koskoff, Koskoff & Bieder, P.C.

350 Fairfield Avenue Bridgeport, CT 06604

Juris No. 32250

TELEPHONE: 203-336-4421

FAX:

203-368-3244

VERIFICATION

I have read the foregoing Verified Complaint and to the best of my knowledge the facts pled therein are true.

Vickie Orsini Nardello

Subscribed and sworn to before me this 11th day of June, 2018.

Notary Publ

Commissioner of the Superior Court